

Block 4, Section D requires that the service provider certify that it has received funds from its customer at least equal to the total discounted amount billed (both E-rate eligible and other services), and that the service provider has “no reason to believe that any of the charges for which my customer is seeking reimbursement on this form have not been paid in full.” Literal compliance with this latter statement requires enormous auditing effort on the part of the service provider – reviewing, on a funding request number by funding request number basis,² for a specified time period, whether the customer paid the charges associated with the (presumptively) E-rate eligible services for which it is seeking reimbursement. Simply looking at an account to determine the balance due would be insufficient: the account may involve multiple funding request numbers, and will reflect billing and payments since inception of the account, for all services rendered. Therefore, an account may show a balance due associated with services rendered outside the BEAR request period, for a different funding request number, or for non-E-rate services rendered to the customer – none of which means that the requested BEAR amount is incorrect. Because of the burden placed on the service provider to certify that the customer has paid in full for those specific charges for which it is seeking reimbursement, Sprint urges that the second sentence of Part D be stricken.

Block 4, Section E requires that the service provider certify that it will:

...institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or the applicant listed in this Form 472, or any person associated in any way with me or the applicant, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.

² Sprint processes approximately 200 BEAR forms per month, and each BEAR form can include multiple funding request numbers.

Sprint is unaware of any statutory language or FCC decision which mandates that service providers track E-rate criminal and civil proceedings, or that they notify USAC of any resulting criminal convictions or civil judgments. Even if it were reasonable to assume that a service provider might be obligated to self-report its own criminal convictions or civil judgments (although, as noted, there is no statutory or regulatory basis for this assumption), it is clearly unreasonable to believe that this obligation would extend to checking and monitoring (on an on-going basis) the *bona fides* of its customers and the employees and associates of its customers. Service providers such as Sprint have neither the obligation nor the resources to act as an E-rate informant.

Moreover, the Section E language is extremely vague, and is so broad as to preclude meaningful compliance. Nowhere are the terms “reasonable measures” or “associated in any way” defined, and there is not even the slightest hint of what standards will be used to measure compliance with this amorphous proposed certification. Because the second sentence of Section E is fatally flawed, it should be stricken from Form 472.

Block 4, Section F requires that the service provider certify that

...all documents necessary to demonstrate compliance with the statute and FCC rules regarding the certifications on this form, the bidding process for services delivered, and the delivery of services receiving schools and libraries discounts listed on this Form 472 will be retained for a period of five years....

Sprint has two concerns with this section. First, it is impossible to assert that “all” relevant documents will be retained for the five year period; documents may be lost, misfiled, or inadvertently damaged or deleted (in particular, electronic documents), and a service provider therefore can never be certain that “all” relevant documents are on hand.

Second, inclusion of this broad certification its inclusion on Form 472 is totally inappropriate. Service provider representatives who are responsible for processing

BEAR forms are experts at invoicing issues; they rarely have knowledge of or control over documents relating to the bidding process or the actual delivery of E-rate services. Indeed, at Sprint, the group responsible for invoicing is separate (by design) from the group responsible for responding to competitive bid requests, to help ensure that the invoice is not manipulated and that the customer is properly billed for all charges for which it is responsible. Combining all document retention certifications on the BEAR form makes it extremely difficult to find a single individual with the knowledge and authority to certify to all areas.

To address both of these concerns, Sprint recommends that the document retention language included on this form state that the service provider certifies that “it has taken reasonable steps to ensure that it has retained the invoicing documents necessary to demonstrate compliance with the statute and FCC rules regarding the certifications on this form, for a period of five years after the last day of service delivered.”³

Finally, Sprint strongly urges that the effective date of any revised BEAR form be no earlier than October 29, 2005. BEAR forms for the 2004 funding year are due by October 28, 2005, and Sprint is concerned that applicants may have their funding requests denied because they inadvertently used the old form, or because the new form is not properly or completely filled out.⁴ Delaying the effective date of any new form 472

³ Sprint’s proposed language here is akin to the safe harbor language codified in Section 64.1200(c)(2)(i) of the Commission’s Rules.

⁴ For example, some applicants may experience difficulty matching registration numbers to specific funding request numbers if their FCDLs do not reflect either the applicant’s or the service provider’s FCC registration number. This is entirely possible since some applicants may not have obtained their FCC registration number until late in 2004.

at least until October 29, 2005 will avoid such negative consequences, with no concomitant drawbacks.

2. Form 473 - The Service Provider Annual Certification (SPAC) Form

The draft SPAC form contains numerous new certifications which are overbroad or which do little to prevent waste, fraud and abuse. Sprint recommends several changes to the following sections of the draft Form 473.

Block 2, Number 9 requires the service provider to certify that it is “fully familiar with the terms, conditions, and purposes” of the E-rate program. Nowhere is “fully familiar” defined, and many of the rules and requirements are sufficiently ambiguous, open to interpretation, complex, or evolving over time, that it is doubtful that any party (including USAC representatives) can confidently assert that it has “full” knowledge of all of the rules and their proper application. Indeed, many of USAC’s internal practices and procedures which have a direct impact on provision and funding of E-rate services are not publicly available. It is clearly unreasonable to ask service providers to certify that they are “fully familiar” with such non-public terms and conditions.

Furthermore, it is not clear what benefits accrue from inclusion of certification number 9. Legitimate program participants will abide by the rules to the maximum extent of their ability. Participants who are engaged in wasteful, fraudulent or abusive practices will not admit to lack of knowledge of program requirements or to their illicit practices in the context of this form. Thus, this certification serves no useful purpose, and should be stricken in its entirety. However, should the Commission insist on including some version of this certification, it should be limited to a statement that the service provider “has reviewed the publicly available rules and guidelines.”

Block 2, Number 11 requires that the service provider certify that it “will require payment from its customers consistent with customary business practices.” Provision of E-rate services is far more complex than in many other markets (both because of complicated E-rate eligibility, invoicing and audit rules, and the vagaries of school system budget processes), and it is incorrect to assume that the same business practices do or should apply to all customers. For example, a large school district with thousands of students on a multi-service E-rate account is likely to be given a longer payment grace period than might be extended to a residential dial-1 service subscriber. It is also entirely likely that business practices will vary from service provider to service provider, or even from service to service. In short, adoption of a “customary business practice” standard is unworkable and should be avoided. Sprint suggests that this certification be revised to state that the service provider will require payment from its customers “consistent with reasonable business practices.”

Block 2, Number 12 requires that the service provider certify that it “will not provide a reward of any type to an applicant in return for the selection of this service provider to provide these goods and services.” However, service providers often offer certain promotional inducements (waivers of nonrecurring charges, discounts on term plans, etc.) to encourage potential customers to select them as their service provider. These promotional offers -- which are, in a literal sense, a “reward” for choosing a particular service provider -- are available to all similarly situated customers, reflect competitive market pressures, and should not be prohibited. Therefore, Sprint recommends that this first sentence be stricken. To help prevent illegal “rewards,” the Commission should revise the second sentence of this section as follows:

The service provider listed in this form will not provide any kickbacks or paid commission to any recipient entity(ies) in connection with (a) selection of this service provider to provide E-rate goods and services, or (b) receipt or maintenance of any of the services or equipment.

Block 2, Number 14 requires that the service provider certify that it has complied and will comply “with all applicable program rules....” Given the complexity and ambiguity of some E-rate rules, certification of absolute compliance is problematic. Sprint recommends that this certification be revised to include the phrase “to the best of my knowledge, information and belief.”

Block 2, Number 15 relates to suspension and debarment for criminal violations or civil judgments. This certification raises the same concerns as Form 472, Block 4, Section E (pp. 2-3 *supra*). The second sentence of this section should be stricken for the reasons cited above.

Block 2, Number 16 requires that the service provider certify that “*all* documents necessary to demonstrate compliance with the statute and FCC rules regarding the certifications on this form, the bidding process for services delivered, and the delivery of services receiving schools and libraries discounts will be retained for a period of at least five years...” (emphasis added). As explained above (with regard to Form 472, Block 4, Section F, pp. 3-4 *supra*), this absolute certification is impossible to make. Therefore, Sprint recommends that this section be revised as follows:

The service provider certifies that it has taken reasonable steps to ensure that it has retained the documents necessary to demonstrate compliance with the statute and FCC rules regarding the certifications on this form, the bidding process for services delivered, and the delivery of services receiving schools and libraries discounts, for a period of at least five years after the last day of service delivered.

Block 2, Number 17 requires that the service provider certify that its E-rate rates “are its lowest and are competitive with the rates generally paid for similar services and equipment in the local community.” Because there is no statutory requirement that E-rate prices be the “lowest” offered by a service provider, or that the prices be based on rates charged in “the local community,”⁵ this draft certification must be stricken.

It is possible that Block 2, Number 17 was intended to help ensure that service providers charge E-rate customers rates that are comparable to those charged for similar services and equipment provided to similarly situated customers. If so, this certification is still unnecessary. Section 54.511(b) of the Commission’s Rules specifies that service providers may not charge E-rate customers “a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.” Because service providers must certify compliance with program rules (including Section 54.511(b)), the proposed Block 2, Number 17 certification is unnecessary and should accordingly be stricken from Form 473.

3. SPIN/FCC Registration Number Match

Forms 472, 473 and 474 all include a new line item which requires that an FCC registration number be provided for a particular SPIN. As an initial matter, it is not clear why an FCC registration number for each SPIN is needed. Inclusion of this information requires programming changes (the addition of a new field to the form affects a service provider’s ability to process forms electronically), and additional processing time for

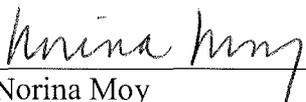
⁵ Indeed, where the E-rate customer is a large school district or a consortium, it is not even clear what the “local” community is.

forms that are filled out manually. Service provider and applicant resources are not unlimited, and the Commission should avoid making revisions to existing forms unless there is an important reason for doing so.

Sprint would also note that the draft forms assume a one-to-one relationship between a SPIN and an FCC registration number. Sprint (and possibly other service providers and applicants as well) has multiple valid FCC registration numbers associated with its various operating units.⁶ Therefore, each SPIN may have multiple valid FCC registration numbers. The proposed forms do not provide for this eventuality, and, if the FCC registration number reporting requirement is maintained, a service provider should not be penalized in any way for reporting one but not all of its FCC registration numbers.

Respectfully submitted,

SPRINT CORPORATION



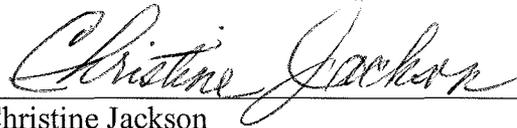
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March 22, 2005

⁶ There is no limitation on the quantity of FCC registration numbers an entity may obtain. As the FCC has stated (Public Notice DA 00-1596), "To keep business activities separate, you may obtain as many registration numbers for as many taxpayer identifying numbers as you need. You may obtain a separate registration number for subsidiaries or sub-agencies, customers, or clients."

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORP.** was filed with the FCC by electronic mail and copies sent by electronic mail on this the 22nd day of March 2005 to the parties listed below.



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